

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EMMA PAZ,)	1:05-cv-00482-OWW-SMS
)	
Plaintiff,)	ORDER VACATING FINDINGS AND
)	RECOMMENDATIONS (Doc. 8)
v.)	
)	ORDER DISCHARGING ORDER
JO ANNE B. BARNHART,)	TO SHOW CAUSE (Doc. 7)
Commissioner of Social)	
Security,)	INFORMATIONAL ORDER
)	
Defendant.)	ORDER DIRECTING CASE TO PROCEED
)	PURSUANT TO SCHEDULING ORDER
)	(Doc. 5)

Plaintiff is represented by counsel and seeks judicial review of a final decision of the Commissioner of Social Security denying an application for benefits. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rule 72-302(c) (15).

On June 10, 2005, over a month after plaintiff had failed to file proof of service of the complaint, within twenty (20) days of the filing of the complaint on April 12, 2005, or by May 2, 2005, the Court issued an order directing plaintiff to submit service documents to the clerk OR show cause why this action should not be dismissed for plaintiff's failure to effect timely service pursuant to the Court's scheduling order of April 13,

1 2005 (Doc. 7). It appeared that the order to show cause had been
2 electronically served on plaintiff. When plaintiff failed to
3 timely respond to the order to show cause, by June 24, 2005, the
4 Court issued Findings and Recommendations to dismiss the action
5 on July 7, 2005 (Doc. 8). Plaintiff did not file objections to
6 the Findings and Recommendations within the fifteen-day objection
7 period, or by July 21, 2005. Therefore, on August 9, 2005, an
8 Order Adopting Findings and Recommendations (Doc. 9) was
9 inadvertently signed by the Magistrate Judge instead of the
10 District Judge, and Judgment was entered (Doc. 10). On August
11 10, 2005, the Court immediately issued an Order Vacating the
12 Order Adopting the Findings and Recommendations, as well as the
13 Judgment entered, and the case was reopened (Doc. 11). However,
14 at this time, the Court also vacates the Findings and
15 Recommendations issued on July 7, 2005 (Doc. 8).

16 Thereafter, on August 17, 2005, the summons was returned to
17 the court executed (Doc. 12), and plaintiff also filed a response
18 to the order to show cause (Doc. 13).

19 Further, the Court makes informational note of the
20 following:

21 The administrative transcript was lodged on August 25, 2005
22 (Doc. 15). Therefore, plaintiff's opening brief is due filed and
23 served by November 30, 2005.

24 On September 3, 2005, plaintiff filed a motion for summary
25 judgment herein, mistakenly titled Broderick Powell v. Jo Anne B.
26 Barnhart, with corresponding incorrect Sacramento case number
27 2:05-CV-0515 CMK (Doc. 16). On September 8, 2005, a Clerk's
28 Notice to plaintiff's counsel so advised, requested refiling of

1 the motion, and terminated the incorrect motion (Doc. 19). To
2 date, plaintiff has not refiled a correct motion for summary
3 judgment herein as requested.

4 Additionally, on September 7, 2005, plaintiff's counsel was
5 advised via court letter that a Consent/Decline form has not been
6 executed, and allowed plaintiff five (5) working days to submit
7 the form attached thereto pursuant to General Order 345.
8 Therefore, the Consent/Decline form was due filed on September
9 14, 2005, and, to date, plaintiff has not complied.

10 Accordingly, it IS HEREBY ORDERED that:

11 1. The Findings and Recommendations, filed on July 7,
12 2005, are VACATED;

13 2. The order to show cause, filed June 10, 2005, is
14 DISCHARGED;

15 3. This action PROCEED in accordance with the pertinent
16 rules of court and the Court's scheduling order of April 13,
17 2005;

18 4. Plaintiff file a Consent/Decline form, as previously
19 instructed, pursuant to General Order 345, by September 30, 2005;

20 5. Plaintiff file and serve an opening brief by November
21 30, 2005.

22 **Plaintiff is forewarned that failure to comply with this order**
23 **may result in the imposition of sanctions and/or recommendation that**
24 **this action be dismissed for failure to obey a court order.**

25 IT IS SO ORDERED.

26 **Dated: September 20, 2005**
27 **icido3**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE